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T.R.A. DOCKET ROOM
August 30, 2004

Joelle J Phillips
Attorney

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Exemption of Certain Services*
Docket No. 03-00391

Dear Chairman Miller:

Enclosed are the original and fourteen copies of

1. *BellSouth's Motion to Compel Responses to its First Set of Interrogatives and Requests for Production of Documents Propounded to AT&T*
2. *BellSouth's Motion to Compel Responses to its First Set of Interrogatives and Requests for Production of Documents Propounded to the Consumer Advocate*

Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition for Exemption of Certain Services*

Docket No. 03-00391

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO COMPEL
RESPONSES TO ITS FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO
AT&T OF THE SOUTH CENTRAL STATES, LLC**

BellSouth Telecommunications, Inc. ("BellSouth") files this *Motion to Compel Responses to Its First Set of Interrogatories and Requests for Production of Documents Propounded to AT&T of the South Central States, LLC* ("AT&T") and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows.

On August 16, 2004, AT&T served its responses to BellSouth's first set of discovery

I. Interrogatories 3 – 5

With respect of to each of the following interrogatories, AT&T failed to provide any substantive response and instead referred to its response to Interrogatory No. 1, which provides no substantive information, but rather states that AT&T intends to provide a witness who will "address PRI service in the associated market in the state of Tennessee." As demonstrated from the following interrogatories, this response is inadequate

Interrogatory No. 3: Please state whether you will contend in this docket that PRI service is not sufficiently competitive in Tennessee to qualify for exemption under T.C.A. § 65-5-208(b), and if you will contend such, state all bases upon which you will make such

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contention, and all facts which you believe support such contention.

Response: See above response to Interrogatory No. 1.

Objection: BellSouth objects that the response is inadequate in that AT&T has failed to identify whether it will contend that PRI is not sufficiently competitive in Tennessee to qualify for exemption. Obviously, in order to prepare its case in this docket, BellSouth is entitled to know whether this fact will be disputed, particularly in light of the fact that, in the earlier segment of this docket addressing intraLATA toll, there was no factual dispute regarding the competitive nature of that service. BellSouth has reasonably sought to determine whether such factual issues will be presented in this portion of the docket and, if so, the basis upon which such contention will be made and the facts upon which AT&T intends to rely.

Discovery and testimony are two different things. If it were sufficient to respond to discovery by saying merely, "See testimony to be provided later," which is basically what AT&T has done, then discovery would be rendered utterly useless. Accordingly AT&T's responses are inadequate.

Interrogatory No. 4: Please state whether you agree that competition for PRI services in Tennessee is an effective regulator of price for PRI service, and if you do not agree, please state why you do not agree and all facts that you believe support your position.

Response: See above response to Interrogatory No. 1.

Objection: BellSouth objects that the response is inadequate in that AT&T has failed to identify whether it will contend that PRI is not sufficiently competitive in Tennessee to qualify for exemption. Obviously, in order to prepare its case in this docket, BellSouth is entitled to know whether this fact will be disputed, particularly in light of the fact that, in

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Interrogatory No. 5: Please identify all ways in which you believe exempting PRI service from tariff requirements would cause harm to any end-user in Tennessee and for each way identified, please explain:

- a) the basis for your belief;
- b) any example of such harm being caused anywhere else in the United States;
- c) how likely you believe that harm would be to occur.

Response: See above response to Interrogatory No. 1.

Objection: BellSouth objects that the response is inadequate in that AT&T has failed to identify whether it will contend that PRI is not sufficiently competitive in Tennessee to qualify for exemption. Obviously, in order to prepare its case in this docket, BellSouth is entitled to know whether this fact will be disputed, particularly in light of the fact that, in the earlier segment of this docket addressing intraLATA toll, there was no factual dispute regarding the competitive nature of that service. BellSouth has reasonably sought to determine whether such factual issues will be presented in this portion of the docket and, if so, the basis upon which such contention will be made and the facts upon which AT&T intends to rely.

Discovery and testimony are two different things. If it were sufficient to respond to discovery by saying merely, "See testimony to be provided later," which is basically what AT&T has done, then discovery would be rendered utterly useless. Accordingly AT&T's responses are inadequate.

II. Interrogatories 8 – 13

With respect to each of the interrogatories listed below, AT&T states its intent to collect information and supplement its response at a "later date". As to each such response, obviously BellSouth is entitled to obtain the information within the time frame established by the schedule in this docket, to which AT&T agreed. While BellSouth is willing to accommodate short delays as parties gather information, BellSouth reserves the right to move to compel in the event that such responses, when provided, are inadequate. BellSouth further asserts that the objections raised by AT&T regarding these interrogatories are unfounded.

Interrogatory No. 8: Please identify every county in Tennessee in which you have not sold PRI during the past five years.

Response: AT&T objects to this question as being overly broad and burdensome. AT&T also objects to the relevance of this question. Unless BellSouth intends to obtain similar data from all competing local exchange carriers in Tennessee, information concerning the PRI sales of a single competing carrier will be irrelevant to the determination of the extent of competition in this market. Nevertheless, in an effort to be cooperative and without waiving these objections, AT&T is in the process of collecting information about the sale of PRI lines in Tennessee and will supplement this response at a later date.

OBJECTION: The question is not overly broad and burdensome as AT&T suggests, in that it is limited in duration to only five years. The question is relevant in that it is designed to elicit information demonstrating areas in Tennessee in which AT&T

and others may contend that PRI is not competitive. BellSouth does intend to obtain similar data regarding other CLEC activity in Tennessee. However, because such other CLECs have not chosen to participate in this docket, BellSouth will rely on other means of discovery or evidence in order to establish such CLEC activity, such as the addenda attached to the numerous CSAs on file at the TRA for PRI sales.

Interrogatory No. 9: Please state the average price at which you have sold PRI in Tennessee during 2004, 2003, 2002, and 2001.

Response: See the above response to Interrogatory No. 8.

OBJECTION: BellSouth again objects to the contention that the question is overly broad and burdensome as it is limited in duration to the last four years. BellSouth has provided similar information in response to discovery in this docket related to both PRI and to intraLATA toll. The relevant statute addresses whether a service is competitive enough in terms of whether competition is sufficient to regulate price. Consequently, questions regarding the average price at which PRI has been sold in Tennessee by various providers is clearly relevant.

Interrogatory No. 10: Please state whether you presently offer, or have offered during the past five years, in Tennessee discounts on PRI when purchased in combination with other services.

Response: See the above response to Interrogatory No. 8.

OBJECTION: BellSouth objects to the response. The question is not broad or burdensome in that it is limited in duration to five years, and again focuses on discounts on PRI, which are clearly relevant to whether the competitive nature of PRI is sufficient to regulate price. Such competitive discounts, used to promote service in competition with other providers, are clearly relevant to the competitive nature of the service in Tennessee.

Interrogatory No. 11: Please state whether you presently offer, or have offered during the past five years, in Tennessee discounts on PRI based on volume or term commitments.

Response: See the above response to Interrogatory No. 8.

OBJECTION: BellSouth objects to the response. The question is not broad and burdensome in that it is limited in duration to five years, and again focuses on discounts on PRI, which are clearly relevant to whether the competitive nature of PRI is sufficient to regulate price. Such competitive discounts used to promote service in competition with other providers are clearly relevant to the competitive nature of the service in Tennessee.

Interrogatory No. 12: Do you offer, or are you aware of competitors who offer, whether on a standalone basis or bundled basis or promotional basis, PRI at prices below \$800 per month?

Response: See the above response to Interrogatory 8. AT&T adds the additional objection that it has no unique knowledge of what prices competitors are charging for PRI services and is no [sic] better position than BellSouth to obtain that information.

OBJECTION: BellSouth objects to the response in that the question is, again, neither broad nor burdensome on its face, as it simply asks AT&T to identify those competitors offering PRI at a particular price of which AT&T is aware. It is clearly relevant in that it addresses the pricing of the competitive PRI offerings in Tennessee. As to the additional objection asserted by AT&T that it has "no unique knowledge", BellSouth has properly asked AT&T to identify that information of which AT&T is aware. AT&T can certainly refer BellSouth to some other source if AT&T believes that such information is available generally to BellSouth.

Interrogatory No. 13: Please state the number of years you have been offering PRI to customers in Tennessee.

Response: See the above response to Interrogatory No. 8.

OBJECTION: BellSouth fails to understand how AT&T could assert that the historical fact of the length of time AT&T has offered PRI in Tennessee could be considered broad or burdensome. Moreover, as this docket will consider the development of the PRI market, the history of the offering of PRI is clearly relevant.

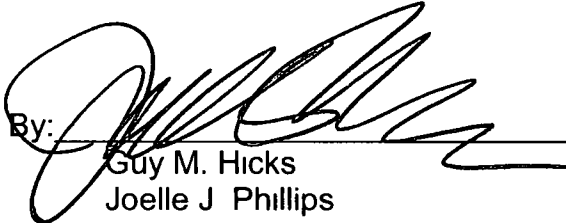
Conclusion

For the foregoing reasons, BellSouth respectfully urges the TRA to enter an order compelling AT&T to provide answers to the foregoing discovery requests.

BellSouth further urges the Authority to provide BellSouth the opportunity to propound further discovery at such time as AT&T provides the supplemental answers referenced in its response. The schedule in this docket specifically provides parties the opportunity to take a second round of discovery, refining and clarifying information obtained in response to the first round. It is necessary for BellSouth to have complete answers to the first round in order to effectively use the second round as established in the schedule.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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333 Commerce Street, Suite 2101
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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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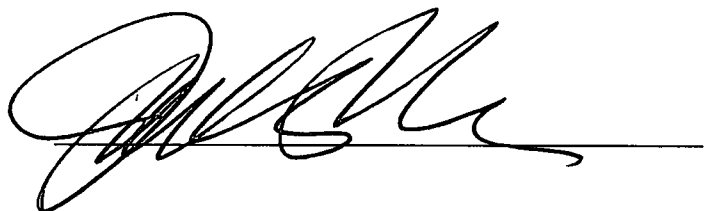
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In Re: *Petition for Exemption of Certain Services*

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BELLSOUTH TELECOMMUNICATIONS, INC.

By: 
Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition for Exemption of Certain Services*

Docket No. 03-00391

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO COMPEL
RESPONSES TO ITS FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO
THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE OF THE STATE OF TENNESSEE**

BellSouth Telecommunications, Inc ("BellSouth") files this *Motion to Compel Responses to Its First Set of Interrogatories and Requests for Production of Documents Propounded to the Consumer Advocate and Protection Division of the Attorney General's Office of the State of Tennessee* ("CAD" or "Consumer Advocate") and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

On August 16, 2004, the Consumer Advocate served its responses to BellSouth's first set of discovery.

I. Interrogatories 1 – 4

BellSouth reserves its right to compel further response at such time as the Consumer Advocate responds as it indicated it would in its responses.

Interrogatory No. 1: Please identify each fact witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the witness will testify;
- b) the basis of the witness' personal knowledge of the matter regarding which witness will testify; and
- c) all facts of which the witness is aware that support the witness' testimony.

Response:

The Consumer Advocate objects to this interrogatory on the ground that it is not required to provide a witness list with summaries. See *Strickland v. Strickland*, 681 S.W.2d 496, 499 (Tenn. Ct. App. 1981). Without waiving its objection, the Consumer Advocate responds as follows: Through investigation and discovery, the Consumer Advocate is in the midst of its review and analysis of this docket. The Consumer Advocate has not identified any person who may have discoverable factual information. In accordance with Tenn. R. Civ. P. 26, the Consumer Advocate will supplement this response as necessary to identify persons who may have discoverable factual information but will not provide a witness list with summaries.

Objection: BellSouth reserves its right to seek to compel further response at such time as the Consumer Advocate supplies BellSouth with the information referenced in its response.

Interrogatory No. 2:

Please identify each expert witness you intend to present in this docket and, for each, please state:

- a) the subject or subjects upon which the expert will testify;
- b) the basis for your assertion that the witness is qualified as an expert including, but not limited to, a current curriculum vitae;
- c) all tests, studies, measurements, experiments, or other analysis or actions performed or observed by the expert relating to the expert's testimony;
- d) all opinions that the expert will present in this docket and the basis for each opinion; and
- e) all facts of which you or the expert are aware that support those opinions.

Response:

Through investigation and discovery, the Consumer Advocate is in the midst of its review and analysis of this docket. Accordingly, the Consumer Advocate has not identified the expert witness(es) that it may present in this docket or determined the subject(s) or opinion(s) upon which such witness(es) may testify. In accordance with Tenn. R. Civ. P. 26, the Consumer Advocate will supplement this response as necessary to identify each

person whom the Consumer Advocate expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Objection: BellSouth reserves its right to seek to compel further response at such time as the Consumer Advocate supplies BellSouth with the information referenced in its response.

Interrogatory No. 3: Please state whether you will contend in this docket that PRI service is not sufficiently competitive in Tennessee to qualify for exemption under T.C.A. § 65-5-208(b), and if you will contend such, state all bases upon which you will make such contention, and all facts which you believe support such contention.

Response: The Consumer Advocate has not completed its discovery and investigation into the issue of whether PRI service is sufficiently competitive in Tennessee to qualify for exemption under Tenn. Code Ann. § 65-5-208(b). In accordance with Tenn. R. Civ. P. 26, the Consumer Advocate will supplement this response as necessary once it concludes its review and analysis.

Objection: BellSouth reserves its right to seek to compel further response at such time as the Consumer Advocate supplies BellSouth with the information referenced in its response.

Interrogatory No. 4: Please state whether you agree that competition for PRI services in Tennessee is an effective regulator of price for PRI service, and if you do not agree, please state why you do not agree and all facts that you believe support your position.

Response: The Consumer Advocate has not completed its discovery and investigation into the issue of whether competition is an effective regulation of price for PRI services. In accordance with Tenn. R. Civ. P. 26, the Consumer

Advocate will supplement this response as necessary once it concludes its review and analysis.

Objection: BellSouth reserves its right to seek to compel further response at such time as the Consumer Advocate supplies BellSouth with the information referenced in its response.

II. Interrogatory No. 6

Interrogatory No. 6: Please identify and describe with specificity any way in which you believe that the market in Tennessee for PRI service is different than the market in other states for PRI service.

Response: The Consumer Advocate objects to this interrogatory on the ground that it is not reasonably calculated to the lead to the discovery of admissible evidence and is not relevant to the subject matter of this docket. In particular, potential differences between the PRI service market in Tennessee and the PRI service market in other states have no bearing on whether PRI service should be exempted from certain regulatory requirements pursuant to Tenn. Code Ann. § 65-5-208(b).

Objection: BellSouth moves to compel on the basis that the interrogatory seeks to elicit information that would be relevant to the determination of the competitive nature of PRI in Tennessee. Comparison of this market to markets elsewhere in the United States may provide useful information on which the TRA may based its decision about whether the competitive nature of PRI service in Tennessee is sufficient to merit relief under this statute.

III. Interrogatory No. 9

Interrogatory No. 9: Please identify all services that you believe provide end users with similar functionality to that provided by PRI.

Response: The Consumer Advocate objects to this interrogatory on the ground that it is not reasonably calculated to lead to

the discovery of admissible evidence and is not relevant to the subject matter of this docket. In particular, potential differences between PRI service and other services that may provide end users with similar functionality to that provided by PRI have no bearing on whether PRI service should be exempted from certain regulatory requirements pursuant to Tenn. Code Ann. § 65-5-208(b). The Consumer Advocate further objects to this interrogatory on the ground that it is vague, overly broad, imprecise, or uses terms that are subject to multiple interpretations. In particular, the term “similar functionality” is not properly defined or explained for purposes of this interrogatory.

Objection: BellSouth objects that the Consumer Advocate’s response is inadequate. The question is reasonably calculated to lead to the discovery of admissible evidence in that it seeks to obtain information that could be used to describe or define the market for services in Tennessee at issue in this docket. The TRA has often recognized the importance of “intermodal competition”, that is, competition using different technologies to provide customers with similar or the same services. The interrogatory is designed to elicit any information the Consumer Advocate has about other services that may provide similar functions to customers and also is relevant to the issues that will be considered in this docket. The term “similar functionality” is used in the ordinary manner, is not a term of art, and is therefore not confusing.

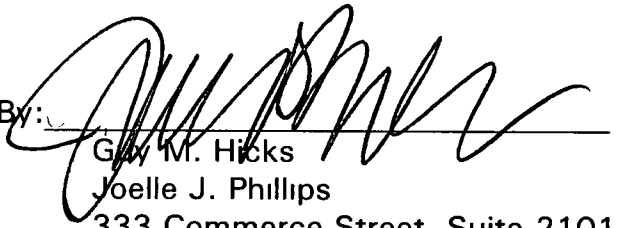
Conclusion

For the foregoing reasons, BellSouth respectfully urges the TRA to enter an order compelling the Consumer Advocate to provide answers to the foregoing discovery requests.

BellSouth further urges the Authority to provide BellSouth the opportunity to propound further discovery at such time as the Consumer Advocate provides the supplemental answers referenced in its response. The schedule in this docket specifically provides parties the opportunity to take a second round of discovery, refining and clarifying information obtained in response to the first round. It is necessary for BellSouth to have complete answers to the first round in order to effectively use the second round as established in the schedule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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